

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN SLOAN,)	
)	
Plaintiff,)	
)	
vs.)	Civ. A. No. 16-1182
PA DEPT. OF CORRECTIONS, SCI-)	Judge Nora Barry Fischer
MERCER, SUPERINTENDENT)	Magistrate Judge Cynthia Reed Eddy
THOMPSON, MR. BOOGS, MR.)	
BROMLEY, MR. DELLORSO, MS. BOAL,)	
MR. WOODS, MS. ENGSTROM,)	
CORRECT CARE SOLUTIONS,)	
)	
Defendants,)	

MEMORANDUM ORDER

The present action was filed with this Court on August 5, 2016. The case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Local Rules of Court 72.C and 72.D. Plaintiff's motion to proceed in forma pauperis was granted on August 8, 2016 and his complaint was filed on the same day. (Docket Nos. 2, 3).

Plaintiff later filed an amended complaint on December 28, 2016. (Docket No. 36). In response, Defendants Boal, Boggs, Bromley, Dellorso, Engstrom, Pa Dept. of Corrections, SCI-Mercer, Sullenberg, Thompson, and Woods, (collectively, the "DOC Defendants"), filed a motion to dismiss and brief in support on January 11, 2017. (Docket Nos. 39, 40). Defendants Correct Care Solutions, Richard Ellers, Karen Feather, and Scott Morgan, (collectively, the "Medical Defendants"), likewise submitted a motion to dismiss and brief in support on January 17, 2017. (Docket Nos. 42, 43). Plaintiff John Sloan filed a brief in opposition to both motions to dismiss on March 2, 2017. (Docket No. 47). The Magistrate Judge's Report and

Recommendation, (“R&R”), filed on August 18, 2017, recommended that the motions to dismiss filed by the Medical Defendants and the DOC Defendants be granted, in part and denied, in part. (Docket No. 54). Service of the R&R was made on all parties. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, that the Defendants’ written objections, if any, were due by August 31, 2017 and that Plaintiff’s written objections, if any, were due by September 5, 2017. (Docket No. 54). Neither party timely submitted any objections to the R&R which the Court has now reviewed and considered.

After a de novo review of the pleadings and documents in this case, together with the R&R, the following order is entered:

IT IS HEREBY ORDERED that the R&R [54] of Magistrate Judge Cynthia Reed Eddy is hereby adopted as the opinion of the district court;

IT IS FURTHER ORDERED that the DOC Defendants’ motion to dismiss [39] is granted, in part, and denied, in part.

The DOC Defendants’ motion [39] is granted to the extent that:

1. All claims against SCI-Mercer and the Department of Corrections are dismissed with prejudice; and,
2. The Eighth Amendment claims against Defendants Thompson, Woods, and Sullenberger are dismissed with prejudice.

The DOC Defendants’ motion [39] is denied to the extent that:

1. Plaintiff’s Eighth Amendment claims against Bromley, Boggs, and Dellorso shall proceed to discovery; and
2. Plaintiff’s retaliation claims against Engstrom, Thompson, Bromley, Boggs,

and Dellorso shall proceed to discovery.

IT IS FURTHER ORDERED that the Medical Defendants' motion to dismiss [42] is granted, in part, and denied, in part.

The Medical Defendants' motion [42] is granted to the extent that:

1. Plaintiff's Fourteenth Amendment claims are dismissed, with prejudice, and leave to amend such claims is denied.
2. Plaintiff's *Monell* claim against Correct Care Solutions is dismissed, without prejudice, and he is granted leave to amend his *Monell* claim but only to the extent that he can allege sufficient facts to allow the Court to conclude that his treatment, or lack thereof, was part of a pervasive corporate policy or custom, including a failure to train, which directly caused the constitutional violations about which he complains.

The Medical Defendants' motion [42] is denied to the extent that:

1. Defendants' claims of res judicata are denied, without prejudice; and,
2. Plaintiff's Eighth Amendment deliberate indifference claims against Defendants Morgan, Feathers and Ellers shall proceed to discovery.

FINALLY, IT IS ORDERED that this matter is hereby remanded to Magistrate Judge Eddy to conduct further proceedings and issue appropriate Orders.

By the Court,

s/Nora Barry Fischer
Judge Nora Barry Fischer
United States District Judge

Dated: September 6, 2017

cc/ecf: The Honorable Cynthia Reed Eddy
United States District Court
Western District of Pennsylvania

All counsel of record.
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